

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795	Hearing Date/Agenda Number November 13, 2002
<h1 style="margin: 0;">STAFF REPORT</h1>	File Number SP02-040
	Application Type Appeal of Special Use Permit Approval
	Council District 6
	Planning Area West Valley
	Assessor's Parcel Number(s) 277-33-013
PROJECT DESCRIPTION Completed by: Elena Lee	
Location: 365 South Redwood (West side of Redwood Avenue, approximately 120 feet west of Hemlock Avenue)	
Gross Acreage: 0.15 Net Acreage: n/a Net Density: n/a	
Existing Zoning: CG General Commercial Existing Use: Vacant single-family residential house	
Proposed Zoning: CG General Commercial Proposed Use: Commercial	
GENERAL PLAN Completed by: EL	
Land Use/Transportation Diagram Designation General Commercial Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations 	
SURROUNDING LAND USES AND ZONING Completed by: EL	
North: Commercial CG General Commercial	
East: Commercial and residential CG General Commercial	
South: Santana Row Mixed Use A(PD) Planned Development	
West: Santana Row Mixed Use A(PD) Planned Development	
ENVIRONMENTAL STATUS Completed by: EL	
<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on </div> <div> <input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete </div> </div>	
FILE HISTORY Completed by: EL	
Annexation Title: Maypark No_1 Date: 2/18/54	
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION	
<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input checked="" type="checkbox"/> Uphold Director's Decision </div> <div> Date: _____ </div> <div> Approved by: _____ <input type="checkbox"/> Action <input type="checkbox"/> Recommendation </div> </div>	
CONTACT/ARCHITECT OWNER/APPLICANT	
<div style="display: flex; justify-content: space-between;"> <div> PNB Architect Attn: Lee Duong 1323 San Domar Mountain View, CA 94043 </div> <div> Neil Songer 996 Capitola Way Santa Clara, CA 95051 </div> </div>	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: EL

Department of Public Works

See attached for Public Works Final Memo

Other Departments and Agencies

See attached for Fire Department Memo

GENERAL CORRESPONDENCE

See attached for appeal documents from Richard Cuevas dated October 21. Also attached are three letters submitted prior to the Director's Hearing from neighboring residents requesting denial of the Special Use Permit

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The appellant, Richard Cuevas, is appealing the Planning Director's decision to approve a Special Use Permit (File No. SP02-040) to allow the conversion of a residential structure for commercial use on a 0.15 gross acre site in the CG General Commercial Zoning District, located at 365 S. Redwood Avenue. Pursuant to Section 20.80.300 of Title 20 of the Municipal Code, a Special Use Permit is required to convert a one-family dwelling unit to any non-residential use permitted in the applicable zoning district.

The parcel is located in an area that was originally developed as a single-family neighborhood, but that has been zoned and designated in the General Plan for commercial uses for the past 30 years. Some legal non-conforming residences remain, while others have been converted to commercial use. Uses immediately adjacent to the site include commercial to the north and south, the Santana Row mixed-use development to the west, and commercial and single-family residential to the east.

A Conditional Use Permit was approved for the conversion of the subject single-family residence to commercial use in the early 1980's (File No. CP81-07-035). This permit expired when the property owner failed to implement the required improvements within the time period specified in the permit conditions; nevertheless, commercial use of the structure was implemented and continued until the applicant was informed earlier this year that the conversion was implemented without the appropriate permit. In a letter dated June 7, 2002, staff also informed the applicant that the nonconforming status of the prior residential use had been abandoned. The applicant was directed to file either a Conditional Use Permit or a Special Use Permit to convert the residential structure for commercial use. The applicant ceased the commercial use and the structure remains vacant.

On July 18, 2002, the applicant filed the subject Special Use Permit application. The proposal was reviewed in light of Council Policy 6-11; *Conversion of Residential Structures to Non-Residential Uses* and was found to be in conformance. The Planning Director conditionally approved the Permit on October 9, 2002. The Permit included a condition for revised plans to provide additional landscaping and to make minor corrections to the parking analysis. The applicant has submitted revised plans providing additional landscaping. Staff has corrected the parking analysis on the project plan set. An appeal of the Planning Director's decision was filed on October 21, 2002 (see attached). The Notice of Appeal does not state the basis for the appeal, but references an attached letter from Ken Yeager, dated April 8, 2002 and a real estate flyer for the property. The appellant also submitted suggested findings for denial and conditions for approval. These items are addressed in the analysis section below.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15303 of CEQA this project is exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

GENERAL PLAN CONFORMANCE

The proposed conversion to commercial use conforms to the General Plan designation for this property of General Commercial. General Commercial is a non-specialized commercial designation intended to permit a wide variety of commercial uses.

ANALYSIS

Following is a response to the items submitted with the Notice of Appeal.

Letter from Ken Yeager dated April 8, 2002

Staff Response: This letter addresses a number of issues of interest to area residents. Paragraph 5 references a police matter involving a former business at the subject site. Previous arrests or police concerns regarding a business at this site are not relevant to the current land use decision. The site's Zoning and General Plan designations call for commercial use and the proposal conforms to the Council's Policy for conversion of residential structures. If future businesses or individuals associated with this site engage in illegal activities, the San Jose Police Department will take action to address these issues. Any lack of conformance with the conditions of the Special Use Permit will be subject to Code Enforcement action and potential revocation of the Permit through the Notice of Non-Compliance/Order to Show Cause process.

Real Estate Flyer

Staff Response: This flyer identifies the property as a "commercial and residential property in one". Staff has clarified for the property owner that the site has lost its legal non-conforming status for residential use. Only commercial uses of the CG Commercial Zoning District will be allowed on this site.

Recommendation for Denial

The appellant requests that the Planning Commission deny the Special Use Permit and include the following facts and findings in its Resolution.

- 1) Previous Arrest.
- 2) Lied to Richard Cuevas about use.
- 3) 10 Children within proximity approximately 300 ft.
- 4) Large amount of registered sex offenders in 95128 zip code.
- 5) Past Parking issues. Johns will not use their parking to avoid from being seen.
- 6) Public Nuisance. This residence has transferred from Soothing touch Massage to Well Spring Spa. Just in past four years. And according to neighbors has been a problem for over 10 years.

Staff Response: The applicant does not raise any issues that justify denial of this permit. Police issues associated with prior commercial uses at this site are not relevant to the issue of whether commercial uses are appropriate at this location. Police enforcement is the appropriate avenue for dealing with criminal activity. If a future business at this site results in a public nuisance, such a nuisance could be grounds for revocation of this permit through the Notice of Non-Compliance/Order to Show Cause process. The number of children within 300 feet or the number of registered sex offenders in the Zip Code are not relevant to the issue of whether this residence should be converted to a commercial structure. Any future business at this location will need to operate in conformance with all City and other relevant laws and regulations. The City has the resources to enforce its requirements for this property.

Conditions of Approval

The applicant lists 9 proposed conditions of approval. Conditions No. 5 and 6 are already conditions of the Permit. Each of the remaining proposed conditions is addressed below.

1. Operating Hours. 10 am to 5 pm So the neighborhood can have code enforcement checks regularly.

Staff Response: The Permit approved by the Director restricts the operation of any future commercial business to between the hours of 7:00 a.m. and 7:00 p.m. This is intended to conform to the recommendations of the Council Policy that the businesses be restricted to normal daytime operating hours. Staff believes that this recommendation addresses the fact that structures converted from residential to commercial use are often located within areas that are transitioning from residential to commercial use. Staff believes that the recommended hours provide sufficient restriction to address the land use compatibility issue and that additional restriction is not needed to allow appropriate code enforcement inspections.

2. Type of business. Should be of Office type, Financial, Insurance. Any type of cosmology will only mask as cover for improprieties.

Staff Response: The Special Use Permit addresses the conversion of the structure and does not restrict the future use of the structure. The current CG Zoning designation specifies the uses allowed on this site. There is no basis for restricting the use of this structure as proposed. Any cosmetology business at this location would need to conform to all applicable laws and regulations.

3. Conditions for Sale. Currently 365 [Redwood Avenue] is for sale. Owner's intentions of Special Use Permit should be explained in detail.

Staff Response: A Special Use Permit is required to convert a residential structure for non-residential use. The uses of the CG General Commercial Zoning District, as specified in Title 20 of the San Jose Municipal Code, govern what type of business can occur at this location. A proposed Special Use Permit may regulate land use in conformance with the requirements of Title 20, but such a permit may not require an applicant to "explain intentions". The applicant has indicated that his intention is to sell the property.

4. Structure Size. I believe structure is not up to code. in its for sale flyer it list as four bedroom and home looks as if it only 1100 sq feet.

Staff Response: Condition No. 3 of the Special Use Permit requires that the applicant obtain a Building Permit to convert the structure to commercial use. The process may require upgrades to the structure and will include inspections to ensure that the structure conforms to the Building Code.

5. 373 So Redwood. Is currently rented by the applicants and no fencing should be torn down to create an easement in past clients/johns have scurried from structure to structure.

Staff Response: There is no proposal to remove the fence. Staff has included a condition in the Draft Planning Commission Resolution (see attached) requiring that the existing fence be maintained.

6. No Beds or tables. Only to discourage past practices.

Staff Response: There is no appropriate land use basis for specifying the type of furniture that can be placed within this structure.

7. Lighting. No more neon signs or advertisement.

Staff Response: All signage for this site will be regulated by the Sign Ordinance and subject to the review of the Planning Division. The property owner will be required to obtain a Sign Permit Adjustment before displaying any signs and will be required to comply with the standards for signs located within the commercial zoning districts.

PUBLIC OUTREACH

Hearing notices were mailed to property owners and tenants within 500 feet of the subject property for the October 9, 2002 Director's Hearing and for the November 13, 2002 Planning Commission Hearing in conformance with the Public Outreach Policy. Staff has been available to discuss the project with members of the public.

CONCLUSION

Based on the above analysis, staff concludes that the Special Use Permit, as approved by the Director of Planning, appropriately allows conversion of the subject residential structure for commercial use.

RECOMMENDATION

Planning staff recommends the Planning Commission uphold the Director's decision to approve the conditioned Special Use Permit and include the following findings and conditions shown in the attached resolution.

Attachments